

Appln. No. 10/799,008

Attorney Docket No. 10541-1941

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II. Remarks

Reconsideration and re-examination of this application in view of the above amendments and the following remarks is herein respectfully requested.

Claims 2-19 remain pending. Claim 1 has been cancelled. Claims 3, 8-11, and 16-19 have been withdrawn.

Restriction Issue

Upon review of the restriction requirement, it is noted that claim 2 includes that the first actuator has a motor and a crankshaft and corresponds to Figure 1, the species that was elected by Applicants for prosecution. Accordingly, it is submitted that claim 2 should properly be considered with the elected species.

Further, claim 3, which was inadvertently elected instead of claim 2, has been withdrawn in that it relates to the non-elected species.

Claim Rejections – 35 U.S.C. §103

Claims 1 and 3 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,077,093 to Koelmel et al. (Koelmel) in view of Japanese Patent No. 410102621 to Murakami (Murakami).

The elements of claim 1 have been incorporated into claim 2 and claim 2 is presented as currently amended. Neither Koelmel or Murakami teach or suggest that the first actuator includes a motor and a crankshaft. Accordingly, neither Koelmel and Murakami, either alone or in combination, can teach the present

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Appln. No. 10/799,008

Attorney Docket No. 10541-1941

invention according to claim 2. Further, claim 3 which was inadvertently elected instead of claim 2 has been withdrawn.

Claims 4, 5, 7, 12-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Koelmel in view of Murakami and further in view of U.S. Patent No. 4,539,947 to Sawada et al. (Sawada).

Claims 4, 5, and 7 depend from claim 2 and are, therefore, patentable for at least the same reasons given above in support of claim 2.

The examiner asserts that claim 12 is obvious in view of Koelmel, Murakami and Sawada. However, claim 12 includes both a first and a second actuator. None of the references teach or suggest utilizing multiple actuators, much less, where the first actuator adjusts the volume and neck length and where the second actuator is coupled between the first member and the neck. Accordingly, Applicant suggests that a *prima facie* case for obviousness has not been established. "The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP §2142. The examiner has not provided factual support that the subject matter of claim 12 would have been obvious at the time of the invention to a person of ordinary skill in the art. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte*, Clapp, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985).

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Appl. No. 10/799,008

Attorney Docket No. 10541-1941

Rather, the examiner summarily states "at the time of the invention it would have been obvious to one of ordinary skill in the art to combine the teachings of Sawada to have an actuator coupled with the neck and a resonator wall with the resonator structure of Koelmel in view of the Japanese patent. As the moveable member of Koelmel is a wall defining the resonator volume." As such, the examiner has provided no factual basis within the references or otherwise that suggests why or how one of ordinary skill in the art at the time of the invention would have combined the references to produce the configuration provided in claim 12. Accordingly, the combination is improper and the rejection of claim 12 under 35 U.S.C. § 103 should be withdrawn.

Claims 13 and 14 depend from claim 12 and are, therefore, patentable for at least the same reasons as given above in support of claim 12.

Similar to claim 12, claim 15 has also been summarily rejected. Claim 15 includes a second member configured to change the resonator volume in relation to the neck length. The examiner has identified no such second member in any of cited references. The examiner merely contends "at the time of the invention it would have been obvious to one of ordinary skill in the art to combine the teachings of Sawada to have an actuator coupled with the neck and a resonator wall with the resonator structure of Koelmel in view of the Japanese patent. As the moveable member of Koelmel is a wall defining resonator volume. The change in neck length would necessarily change the relationship between the resonator volume and neck length." Thus, examiner has provided no factual basis indicating why or how one of

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Appln. No. 10/799,008

Attorney Docket No. 10541-1941

ordinary skill in the art would have combined the references to arrive at the configuration provided in claim 15.

Accordingly, the combination of references provided by the examiner is improper and Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 103.

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-10-

Appln. No. 10/799,008

Attorney Docket No. 10541-1941

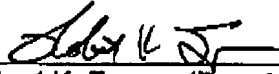
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Conclusion

In view of the above amendments and remarks, it is respectfully submitted that the present form of the claims are patentably distinguishable over the art of record and that this application is now in condition for allowance. Such action is respectfully requested.

Respectfully submitted by,

Dated: 4/23/07
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-11-